

803 KAR 2:090. Unwarranted inspections; complaint.

RELATES TO: KRS 338.121

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following procedure has been formulated, which an employee is to follow in filing a complaint alleging a violation of KRS Chapter 338. The function of this administrative regulation is to outline this procedure to be followed by the employee in filing his complaint; the administrative regulation also outlines the procedure to be followed by the Commissioner of the Department of Workplace Standards if he reviews the complaint and finds an inspection is not warranted.

Section 1. Complaints by Employees. (1) Any employee or representative of employees who believes that a violation of KRS Chapter 338 exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner of the Department of Workplace Standards. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Commissioner of the Department of Workplace Standards.

(2) If upon receipt of such notification the commissioner determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Commissioner of the Department of Workplace Standards in writing of any violation of KRS Chapter 338 which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (1) of this section.

(4) If, after an inspection based on a complaint, a citation is issued covering a violation or danger set forth in the complaint, a copy of the citation should be sent to the complainant at the same time it is sent to the employer.

(5) If, after an inspection based on a complaint, the commissioner determines that a citation is not warranted with respect to a danger or violation alleged in the complaint, the complainant must be informed in writing of such determination. At the same time, the complainant should be notified of his rights of review of such determination. The complaining party may obtain review by submitting a written statement of position to the Commissioner of the Department of Workplace Standards.

(6) KRS 338.121(3)(a) provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter."

Section 2. Inspection not Warranted; Informal Review. (1) If the Commissioner of the Department of Workplace Standards determines that an inspection is not warranted because there are

no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 1 of this administrative regulation, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position to the commissioner. Upon request of the complaining party, the commissioner, at his discretion, may hold an informal conference in which the complaining party may orally present his views. After considering all written and oral views presented, the commissioner shall affirm, modify, or reverse his determination and furnish the complaining party a written notification of his decision and the reasons therefore. The decision of the commissioner shall be final and not subject to further review.

(2) If the commissioner determines that an inspection is not warranted because the requirements of Section 1 of this administrative regulation have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 1 of this administrative regulation. (OSH 107; 1 Ky.R. 160; eff. 12-11-74; Am. 9 Ky.R. 43; eff. 8-11-82; TAm eff. 8-9-2007; TAm eff. 9-8-2011.)